**Editor's note: 93 I.D. 246; Modified and distinguished -- See 99 IBLA 53, 94 I.D. 394 (Sept. 8, 1987)**

ANADARKO PRODUCTION CO.

IBLA 85-135 Decided June 16, 1986

Appeal from decisions of the Wyoming State Office, Bureau of Land Management, segregating noncompetitive oil and gas lease. W-21220 and W-89855.

Reversed in part and remanded.

1. Oil and Gas Leases: Extensions -- Oil and Gas Leases: Unit and Cooperative Agreements

   Where an oil and gas lease is in its extended term by reason of production at the time the lease is segregated by commitment in part to a unit agreement in accordance with 30 U.S.C. § 226(j) (1982), the segregated nonunitized lease will continue in effect by virtue of that production, but for not less than 2 years from the date of segregation.

APPEARANCES: Laura L. Payne, Esq., Carleton L. Ekberg, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The Anadarko Production Company has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated October 19,

1984, noting the segregation of noncompetitive oil and gas lease, W-21220, by reason of its commitment in part to a unit agreement. Specifically, appellant objects to the holding that the term of the nonunitized segregated lease is extended to August 1, 1986.

Appellant's oil and gas lease was issued effective November 1, 1969, for a term of 10 years and so long thereafter as oil or gas is produced in paying quantities. The lease was originally issued for 2560.72 acres situated in Campbell County, Wyoming. Effective June 1, 1975, a portion of the land in appellant's lease, totalling 1,600 acres, was included in the Heldt Draw unit agreement (No. 14-08-0001-13746). The lease was thereby segregated and the nonunitized portion was designated lease W-51703. We are not concerned in this appeal with the lands in lease W-51703.

It appears from the record that lease W-21220 was subsequently extended by reason of production within the Heldt Draw unit. 1/ A memorandum in the case file dated July 27, 1984, states the Culp Draw (Shannon "B" Sand) unit agreement (No. 14-08-0001-21076) was approved effective August 1, 1984, embracing lands included within W-21220 and other leases. The memorandum further states that, pursuant to the terms of the new unit agreement, the Heldt Draw unit agreement will terminate as to certain lands and formations and "the Shannon 'B' Sand under the lands committed thereto shall be deemed

1/ Counsel for appellant asserts the lease was also held by production on lands covered by a communitization agreement to which the lease (W-21220) was committed in part. Appellant states the Knight State No. 1-21 well on the communitized tract was not committed to the Heldt Draw unit agreement.

to be simultaneously merged into [the Culp Draw (Shannon 'B' Sand)] unit agreement."

On the basis of the memorandum, BLM issued two separate decisions dated October 19, 1984, affecting lease W-21220. The first decision recognized the partial termination of the Heldt Draw unit agreement effective August 1, 1984, and held that the term of the leases formerly committed thereto was extended through August 1, 1986, and so long thereafter as oil or gas is produced in paying quantities. This BLM decision cited the regulation at 43 CFR 3107.4 as authority for the holding. The second decision recognized the commitment in part of lease W-21220 to the new Culp Draw (Shannon "B" Sand) unit and segregated the lands not committed into lease W-89855. In addition, the second decision held that W-89855 will continue in effect through August 1, 1986, and so long thereafter as oil or gas is produced in paying quantities.

In its statement of reasons for appeal, appellant contends BLM improperly concluded that segregated nonunitized lease W-89855 was limited to a term of 2 years from the date of segregation and so long thereafter as oil or gas is produced in paying quantities. Appellant argues that, at the time of segregation of the lease, the lease was in its extended term by reason of production pursuant to the Heldt Draw unit and from the communitized Knight State No. 1-21 well. Hence, both the unitized and nonunitized portions of the lease were entitled to an indefinite extension based on that production. Appellant contends the nonunitized lease W-89855 retains the term which lease

W-21220 had at the time of unitization and segregation, and that to hold otherwise would be inconsistent with congressional intent to encourage unitization.

[1] Section 17(j) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(j) (1982), provides that where a portion of the land in a lease is committed to a unit agreement, the lease "shall be segregated into separate leases as to the lands committed and the lands not committed as of the effective date of unitization." See 43 CFR 3107.3-2. In addition, the statute provides that "any such lease as to the nonunitized portion shall continue in force and effect for the term thereof but for not less than two years from the date of such segregation and so long thereafter as oil or gas is produced in paying quantities." 30 U.S.C. § 226(j) (1982) (emphasis added); see 43 CFR 3107.3-2.

Appellant argues that the statutory phrase "the term thereof" means the "term of the lease as it exists at the time of the segregation, whatever that 'term' may then be," citing Solicitor's Opinion, 63 I.D. 246 (1956), 2/ and that its lease was in its extended term by reason of production at that time.

In Solicitor's Opinion, M-36543 (Jan. 23, 1959), at page 1, the Solicitor held that the period of extension of the nonunitized portion of a lease,

2/ The headnote to the Solicitor's Opinion, supra, entitled "Extension of the Portion of a Lease Outside of and Segregated as a Result of the Creation of a Unit Plan," explains that the term of the nonunitized lease shall be the "entire term of the lease or the period that the lease had to run, whether that period was definite or indefinite, as it existed on the date of the segregation." 63 I.D. at 246 (emphasis added).

"whether that was a term of years or 'so long as oil or gas [is] produced from the lease,'" would be determined, at the time of segregation, by "whether [the lease] is * * * within a term of years or whether the length of its present term is to be measured by the life of production." In that case, the Solicitor concluded that the lease, at the time of segregation, was within an extended 5-year term and, thus, the extension of the nonunitized portion of the lease was for that fixed term, despite the fact the lease was producing and might be held by production at the expiration of the 5-year term. The Solicitor stated that the production "[did] not convert the fixed term into an indefinite 'so long as' term." Id. at 2; see Conoco, Inc., 80 IBLA 161, 91 I.D. 181 (1984). However, if the lease was in its extended term by reason of production at the time of segregation by partial commitment to a unit agreement, then both the unitized lease and the segregated nonunitized lease would be subject to extension for the duration of production. Ann Guyer Lewis, 68 I.D. 180 (1961); Solicitor's Opinion, M-36592 (Jan. 21, 1960); see Solicitor's Opinion, 63 I.D. at 246.

The decision of BLM recognizing the partial termination of the Heldt Draw unit cited the regulation at 43 CFR 3107.4, which provides that any lease eliminated from a unit shall continue in effect for the original term of the lease or for 2 years after elimination from the unit and so long thereafter as production is had in paying quantities. Thus, BLM apparently regarded lease W-21220 as having an interval of nonproducing status between elimination from the old unit and formation of the new unit which would justify a 2-year term for the segregated nonunitized lands.

However, this approach has been rejected by the Board when it had occasion to rule on the effect of the simultaneous termination of a producing unit and the commitment of a part of the lands in a lease in the unit to a new producing unit. The Board held the effect of the simultaneous termination of a producing unit and the partial commitment of a lease in its extended term by reason of production within the unit to a new producing unit is to cause the segregated nonunitized lease to have a term coterminous with the producing unitized lease, but not less than 2 years from the date of segregation, and so long thereafter as oil or gas is produced in paying quantities on the nonunitized lease. Conoco, Inc., 90 IBLA 388 (1986). This holding is dispositive of the outcome of the present appeal.

Indeed, appellant's lease was apparently in a producing status by virtue of its commitment to the communitization agreement embracing the producing Knight State No. 1-21 well apart from its commitment to the Heldt Draw unit. Hence, the segregated nonunitized portion of the lease would also be subject to extension for the duration of production from the communitized well. 3/

Accordingly, the decisions of BLM must be reversed to the extent they hold that the segregated nonunitized lease has a term expiring August 1, 1986, rather than so long as oil or gas is produced on the unitized lease, but not less than 2 years from the date of segregation and so long thereafter as oil or gas is produced in paying quantities on the nonunitized lease.

3/ Counsel for appellant states on appeal that the communitized well has now been committed to the new Culp Draw (Shannon "B" Sand) unit.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are reversed in part and the case is remanded to BLM for further action consistent herewith.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Gail M. Frazier
Administrative Judge.